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12 IN THE UNITED STATES DISTRICT COURT
13 DISTRICT OF ARIZONA

14 United States of America,
15
16 Plaintiff,
17
18 vs.
19
20 Timothy Jason Wells,
21
22 Defendant.

No. CR-17-1114-PHX-DLR

**DEFENDANT'S REPLY IN
SUPPORT OF OBJECTIONS TO
PRESENTENCE REPORT**

23 Timothy Jason Wells, through the undersigned counsel, respectfully files
24 this Reply Memorandum in support of his objections to the Presentence Report
25 (PSR). *See* Doc. 78.

26 The government argues that the enhanced based offense level under U.S.S.G.
27 § 2K2.1(a)(4)(B)(i)(I) applies because Mr. Wells constructively possessed the
28 firearms in his step-father's safe. *See* Doc. 83 at 4–5. The government claims Mr.
Wells exercised “dominion and control” over the firearms because (a) he had access
to the safe where they were kept and (b) he admitted to touching some of them. *Id.*

These arguments are unavailing. The purpose of punishing constructive
possession under 18 U.S.C. § 922(g) is to preclude felons from controlling guns by
using others to handle them at their direction. *See Henderson v. United States*, 135

1 S. Ct. 1780, 1784 (2015) (“A felon cannot evade the strictures of § 922(g) by
2 arranging a sham transfer that leaves him in effective control of his guns.”). There
3 was no such arrangement in this case. Mr. Wells indeed had the combination to his
4 step-father’s gun safe, but constructive possession requires more than mere joint
5 access to premises where guns are kept. *See United States v. Rodriguez*, 761 F.2d
6 1339, 1341 (9th Cir. 1985) (collecting cases). When premises are shared by more
7 than one person, the defendant must have not only access to the firearm in question,
8 but also “the power and the intention to exercise dominion and control over it.”
9 *United States v. Terry*, 911 F.2d 272, 278 (9th Cir. 1990). Mr. Wells admitted that
10 his fingerprints would be on some or all of the weapons in the safe, and it is not
11 disputed that many of the guns in the safe did not accept large-capacity magazines.
12 For purposes of more than doubling Mr. Wells’ sentence, *see* Doc. 78 at 2–4
13 (explaining why due process requires clear-and-convincing evidence), it is not
14 enough to speculate that he exercised dominion and control over those guns that
15 accept large-capacity magazines without some evidence that links him directly to
16 such guns. Mr. Wells readily told the agents about his fingerprints; no one appears
17 to have followed up on this claim. The government has therefore not satisfied its
18 burden of proving that the enhanced base offense level applies.
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21 Respectfully submitted: November 15, 2018.

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25 *s/Benjamin Good*
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1 Copy of the foregoing transmitted
2 by ECF for filing November 15, 2018, to:

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17 TIMOTHY JASON WELLS
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